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S U M M A R Y,

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C H A R G E S C A S E A N D E V I D E N C E,

O N A N

I N D I C T M E N T,

Preferred at the last Assizes at STAFFORD,

A G A I N S T

J O H N S P A R R O W, an Attorney,

F O R

P E R J U R Y;

I N T E N D E D A S A

J U S T I F I C A T I O N

O F T H A T P R O C E E D I N G.

Printed for the PUBLISHER.

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STATE OF NEW YORK

IN SENATE

CHARGES AND EVIDENCE

OF A

INDICTMENT

IN SENATE

Rec. Jan. 10, 1901

JOHN S. BROWN, an Attorney

for

the

People of the State of New York

INTENDED AS A

JUSTIFICATION

OF THAT PROCEEDING

Printed for the Legislature

ADVERTISEMENT.

THE Indictment in question was returned *Ignoramus*. At the Assizes, and whilst it was under consideration, Sparrow declared he would bring an Action against the Prosecutor, Mr. John Marsh, for a malicious prosecution, that is, for exhibiting a charge of Perjury against him to the grand Jury without any reasonable or probable Cause. It is now more than two months since that time, but no Action hath appeared—a strange hesitation indeed, if the charge was ill founded, and the more so as it was the second that had been made!—In certain Instances of VIRTUE attacked, it is rigidly and sternly said, that *they who hesitate are lost*! Surely then, in this Case, where a man is attacked in a point, of all others, the most valuable to him as an individual or member of Society, some of that pudency and Spirit would not have been unbecoming or unnecessary. But it is not so: and this man still chuses rather to crouch under the charge with the dastardly, nay guilty Expectation, *that it will only be a nine Days wonder*! Neither is there I believe any man, professional or otherwise, who attempts openly to defend him; but then the profit is made of the advantage arising from the ill success of the accusation; and therefore an old Croney of his, who hath lately laid aside his proper Occupation, is set up to cry out Malice! the Charge is all Rancour and Malice!—By such Acts as these the Lips of the cautious and prudent are effectually closed, and a kind of general obloquy prevails against the Accuser and his Attorney; whilst he—*strange world the while!* rises out of their ashes, *immaculate as a Sheet of white Paper*!—But away with such wretched Tricks: Those who have a just sense of what is due to themselves, will see that this Case is too important, to the accuser and accused, to leave any thing to presumption: for as none but the very vilest of men could be obnoxious to such a charge, so none but the basest and most dangerous, could be either capable of making it, or giving it professional aid, without sufficient Foundation: Justification therefore becomes necessary from one side or the other. Apparently it should come from Sparrow, in the solemn form an Action; but though he hath raised Expectations upon it, and that of those too, whose opinions ought to have been a Law to him, yet now he retreats; necessarily, tho' painfully, therefore, it is taken up by the other side

side.—— But though this Justification is meant to be insisted on in the fullest manner, yet it is proper to declare, that not the most distant Insinuation is meant to be offered against those Gentlemen who had this Inquiry before them : their general high Character indeed is too well known and approved to make such a Declaration very necessary ; and the right of Juries, to pass their own Judgment upon Evidence, is too important to be doubted. Yet this will not take from the sufficiency of the Justification ; in as much, as without pretending to superior Discernment, a better knowledge of Facts may give a better Qualification to apply the Evidence.——

The Case at large indeed is complicated ; but that arises from Sparrow's various false and shuffling Stories, which, though in many Instances so broad as to merit only the Epithet of *impudent*, yet as Plans, require some Attention to display them : whereas the truth or falshood of the real Points in Dispute lie in a narrow compass indeed ; and the *wilfulness* it is apprehended will be very evident. However it is intended to leave nothing to presumption.—— As all the Evidence on both sides hath been already published in a Narrative of the Case, there will be no more of it stated here, than is necessary to substantiate the Charges in question.

J. B.

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A SUMMARY, &c.

A N D

JUSTIFICATION.

PERJURY, by Law, is defined to be, when a lawful Oath is administered, in some Judicial Proceeding, to a Person who swears wilfully, absolutely, and falsely, in a matter material to the Issue or point in question. Within this Description of the Offence it is certainly necessary to bring the present Accusation: but before we consider the different Charges of Perjury, and the Evidence produced in Support of the Indictment, of which a Summary, of the Substance of the present was offered, it will not be improper to give a Sketch of the original Dispute between Mr. Sparrow and Mr. Marsh.

An Account commenced between them in the year 1766, or beginning of the Year 1767, by Mr. Marsh undertaking to pay Sparrow a Bill of Costs in a Cause of Brindley against Marsh, and continued from thence till the year 1778, on Account of Law Business done, and Money lent and received by Sparrow. In the year 1780, and about October, he delivered Mr. Marsh an Account, and demanded the Ballance. He afterwards arrested Mr. Marsh, and the honourable Mr. Justice Gould, on the 29th October 1781, made an Order to the Intent, that an Account should be taken and settled between the Parties, by one of the Prothonotaries of his Court, in which the Cause was. In the Course of this Reference one of the Questions which arose was, whether Sparrow should account with Mr. Marsh for a Sum of TWENTY POUNDS, which Sparrow had received and gave him a Receipt for, dated the 28th September, 1767, on Account? — From the commencement of the account, till the said reference, there never was any account settled between the Parties. In the year 1774, Sparrow delivered an account, but not having given credit for the twenty Pounds, the omission was then, and on other occasions, mentioned to him by Mr. Marsh, as stated

by him in an Affidavit of the 14th May, 1782. Sparrow in order to discharge himself from accounting for the said Sum, before the Prothonotary, made several Affidavits, viz. on the 6th, the 15th and 25th of May, 1782: and it is on the Stories told by him in the Affidavits of the 6th and 25th that the Assignments of Perjury are founded.——His Stories, calculated to that End, are, 1st. That the 20l. was paid him by Mr. Marsh in part of the Debt and Costs in a Cause of *Edward Tongue* against *William Fowler*, in which Mr. Sparrow was Attorney for the Plaintiff, and Mr. Marsh was one of the Bail, and one Richard Fowler deceased the other Bail, for the Defendant, which Suit had been commenced some Months before, in order to recover a Debt of 20l. 4s. od.——2d. That the 20l. in question was afterwards brought to the Account of the said Debt and Costs in the Cause *Tongue* against *Marsh*, on the final settling of the said Debt and Costs.——3d.——upon new grounds, that the 20l. was paid him on Account of the said Debt and Costs, meaning, the general Debt and Costs under the original Cause.——And 4th. That it was intended to be applied, and was really applied, in and upon account of the Cause of *Tongue* against *Marsh*: Actions having been brought by Mr. Tongue, and Judgments and Executions recovered and issued against Mr. Marsh and Richard Fowler, as Bail, before Sparrow received the said twenty pounds.——If in truth the 20l. had been paid or applied on Account of the said Debt and Costs, as they were the Demands of Mr. Tongue and not of Mr. Sparrow, it was certainly right that he should not account for that Sum to Mr. Marsh before the Prothonotary.——The Prothonotary believed his swearing, that it was so paid or applied, and therefore disallowed Mr. Marsh's Claim; whereby a Balance fell in favour of Sparrow of 29l. odd, besides his Costs of the Reference, amounting to upwards of 40l. more; both which he hath lately demanded and been paid, although it was hoped, for Quietness-Sake, that he would have let matters rest as they were. However, it is most certain, that the 20l. was neither paid nor applied on Account of the said Debt and Costs: and although every proper Opportunity hath been offered him to do the right thing, yet still he persists in holding what he hath gotten by this means: the intended Prosecution therefore was the only course left Mr. Marsh; in order that, by proving the Falseness of what Sparrow hath Sworn, Justice might be done.

The Indictment was not offered to be supported by the ordinary Proof of Falseness and Materiality only, in the matters sworn to, which in a mere enquiry is generally deemed sufficient, and although in this Case the Falseness charged are the Stories of an Attorney, sworn to on Affidavits, penned by himself, which of itself seems necessarily to shew Deliberation; but as several years had elapsed since the Transactions sworn to, it seemed proper to shew him, at the time he made these Affidavits, expressly

constant

conscious and sensible of the facts against which he hath sworn; and this it is not doubted but the following Evidence will clearly do: when, therefore, this doth appear, the Case will be, that he hath undertaken to swear wilfully and positively against the plain and evident Truth, by which he hath obtained one large sum of money to himself, and exonerated himself from another, which, it is apprehended, constitutes a full and compleat Charge of Perjury.

The first Charge of Perjury in the Indictment was on Sparrow's Affidavit of the 6th of May 1782, and on this Clause, viz.

1st ASSIGNMENT:—"That John Marsh, on the 28th Day of September, 1767, paid the Deponent John Sparrow, twenty pounds, in part of the Debt and Costs in the said Action (viz. of Tongue against Fowler, for which the Deponent gave him a Receipt, dated the said 28th Day of September 1767, on Account."

EVIDENCE of the FALSEHOOD.

A short Space of time before the Date of the Receipt, Mr. Marsh applied to Sparrow to procure him 100*l.* on Security, which he did, and on that Day the Parties met; but the person lending the Money had only brought 80*l.* it was therefore agreed (Mr. Marsh then owing Sparrow money on Account of the said Bill of Brindley) that he should receive the 20*l.* and place it to Mr. Marsh's Account: This was simply and wholly the Transaction; therefore Sparrow gave Mr. Marsh the following Receipt, "Received 28th September, 1767, of Mr. John Marsh twenty pounds on Account—" J. Sparrow."—It is not then on Account or in part of the Debt and Costs, as here sworn: neither was or is it a Discharge of them, or any part of them: nor was or is it capable of being so considered in Evidence, either in favour of Mr. Marsh, or against Mr. Tongue, to whom the Debt and Costs were due, or against William Fowler the principal, on whom Mr. Marsh would have had a demand for the Money back, as so much paid for his use, had the twenty pounds been really paid on Account of the said Debt and Costs; but it is simply and merely a Voucher for Mr. Marsh against Mr. Sparrow in Account between THEMSELVES: and this is expressly established by Sparrow's own Entry, of the twenty pounds, made the same Day in his CASH-Book, viz. "1767, 28th September, of John Marsh on account of Costs Brindley against Marsh, and Tongue against Ditto. 20*l.* received."—There was then due to Mr. Sparrow from Mr. Marsh, in Brindley and Marsh 15*l.* 5*s.* 3*d.* (which was brought into the Account before the Prothonotary and allowed by him to Sparrow) and in Tongue and Marsh about 2*l.* 10*s.* 6*d.* for which Sparrow had the said Execution against Mr. Marsh, as the Bail of Fowler.—In Fact—and this together with Sparrow's having a Bal-

lance of Mr. Marsh's Money in his hands, could alone be the Reason for his bringing the said Costs against Mr. Marsh to account with himself,—there was, *at that very Time*, more money levied under the said Execution against Richard Fowler than was sufficient to pay the whole Debt and Costs. Agreeable to this Mr. Marsh made an Affidavit, in answer to that of Sparrow's, *before the said entry appeared*, positively contradicting him, that the 20l. was paid on Account of the said Debt and Costs: so that here are three pieces of Evidence, namely the RECEIPT and ENTRY (Sparrow's own written Records of the Transaction at the time) and Mr. MARSH, all confirming each other, and concurring in a direct Contradiction of what Sparrow hath sworn.—*It is then false*, if any regard is to be paid to Evidence.—But it does not rest here,—and the ensuing Fact makes it most evident, that neither at the time of his receiving the 20l. nor from the beginning to the conclusion Tongue's Affair, did Sparrow ever consider the 20l. as paid in part of the Debt and Costs,—for on making out the Account in that Business, stated at the End of this Summary, he actually charged Interest on THIRTY pounds of the money levied on Fowler's said Execution, which was in the Hands of the Sheriff, and was the WHOLE Debt and Costs in the affair (except Mr. Marsh's said Costs, and 6l. 7s. 10d. received by Sparrow of the Appraiser under the same Execution) for one year and a quarter, which was the whole Space of Time from it's being levied until the Account was settled in the Vacation of Trinity Term 1768.—Could then the 20l. have been before paid, or even applied in part of the said Debt and Costs?

Yet further:—and it will be regular Evidence of this Falsehood:—Being forced at length to produce the Entry and Account, which so plainly contradict the present Story, he without ceremony departs from it, and, having made up his mind on the Subject, then, viz. by his Affidavit of the 15th of May, offers this comprehensive Story.—“That though the Entry imports that the 20l. was received on Account of the Costs, Brindley against Marsh as well as Tongue against Marsh, Mr. Marsh being then indebted to him in about fifteen pounds for the Remainder of Costs Brindley and Marsh, yet the said twenty pounds was AFTERWARDS BROUGHT to the Account Debt and Costs Tongue against Marsh, on the FINAL settling the said Debt and Costs, as Deponent verily believes, and the Remainder of the said Costs, in Brindley against Marsh, was carried to the Account of the said John Marsh, with whom he had about that time opened an Account.”—This Story then is a substantial confession that the former one was not true: it adopts the Entry, which contradicts that Story, and substitutes another as consequential of it: It is indeed true that the particulars offered to support this new Story, are a mere Fabrication, and afterwards departed from, but still the *confession* contained in it remains.

THE MATERIALITY and WILFULNESS of the first Falsehood.

It was material, because by saying, the 20l. was paid in part of the Debt and Costs due to Tongue, he exempted himself from any Account of it to Mr. Marsh.

It was *deliberately* and *wilfully* sworn also: because, on attending the Prothonotary the 26th and 29th of April, 1782, his Story was, that the Receipt (then produced) was for part of a Sum of thirty pounds, which Mr. Marsh had paid on Account of *Brindley's Costs*, and was accounted for, and he would swear it: Indeed this was the only pretence he had before answered Mr. Marsh's Claim with, and, it being expected, he was cautioned against it by Mr. Marsh's Attorney.——The story at that time, (tho' in its particular a mere ***) then agreed with the tenor of the Receipt, as to the account it belonged to, namely, that the 20l. was received on account between him and Mr. Marsh: it is no small proof therefore, *that the present was the result of plan and deliberation*.——However he made no Affidavit of it, but by a notice in writing, on the same 29th of April, required a Stay of Proceedings till he had inspected his CASH and BILL OF COSTS Books, and got further Affidavits; for which purpose he immediately came down home from London, and after a Deliberation of *eight Days*, made the present Affidavit.——It's Story certainly produced a *little* Surprise: and although it could only be the Entry and Account that furnished the Hint of it, (for the Entry comes from the Cash-Book mentioned in the said Notice of Inspection, and this Affidavit speaks of the Account in Tongue's Business) yet he did not think it necessary to produce them: but as this Story was new, and it was impossible, from the nature of the thing, that his Accounts should not disclose how the Affair really was, he was required to produce them, and then the Entry and Account appeared.——When, in a matter of Account, a man chuses to give his *ipse dixit*, rather than produce the Accounts, it is plainly evasive; and where the Accounts contradict the thing said, as in this Case, the Suppression is gross, and leaves nothing to presume, with Respect to DESIGN in the false Statement of them. Of this designed concealment an Instance or two will be proper, as Evidence of the Plan and wilfulness of this Story: The first that occurs is in the Fabrication of the Clause of this Affidavit here charged as a Perjury: Take the Clause in it's obvious Sense, and we expect nothing less than that the Receipt, mentioned in it, is expressly on Account of the Debt and Costs: but read the Receipt and it is nothing like it: therefore, to make them relate to each other, by something like verbal conformity, the words "*on Account*" are taken out of the Receipt and ingrafted into the Clause. But is not this a rank jesuitical trick to raise a Belief that the Receipt was really that which it is not, nor capable of being converted into?——No wonder then that the Entry of the same Day was not produced.——Again: Although Sparrow had by this Clause positively said the 20l. was *paid* on Account of these Debt and Costs, yet as an Execution had been levied on Richard
Fowler

Fowler the other Bail, he knew that he would still be liable to an Account for that Sum if it did not appear that there was a Deficiency equal to it; therefore, to make all sure, he says that 6l. 7s. 10s. was all that was levied of Fowler, the Debt and Costs being 36l. odd; But let us see what the account says to this: It charges to that Execution 36l. 7s.—for Sparrow's attending 6s. 8d. — then is deducted this 6l. 7s. 10d. which was received under it by Bloor the Appraiser; and then a Balance of 30l. 6s. 10d. is struck, in order to shew (as this Affidavit of the 15th expresses it) *what remained due under the Execution*: — To comment upon this would be trifling; and we cannot have much better Proof of his design in keeping back the Account — Hence then, that is to say, as the Affidavit, on which this Charge arises, is a second story delivered after many days deliberation; as he suppressed the real Evidence and Accounts to make way for it, and hath discovered the utmost artifice in it's fabrication, it is apprehended there cannot be stronger Proof of Wilfulness.

Although it seems unnecessary to go beyond the preceding proofs of the falsehood, and wilfulness of the Clause, now under consideration, yet in a charge of Perjury, it will not be improper to select other instances of artifice and prevarication, concerning the points in question, which prove attempts to *evade confute, or misrepresent REAL EVIDENCE*; as thereby the mind receives a complete satisfaction; that there could not be any Inadvertency in the falsehoods, but that the swearer's design has been odiously deliberate to overturn the Truth. — The Charge of Interest in the Account on thirty pounds, is before stated as Proof that the 20l. was not paid on Account of the Debt and Costs: Sparrow sensible likewise of this, in his Affidavit of 15th (which I am now upon) to parry it off, says, that he was not intitled to, and did not receive the Interest, *because Mr. Marsh had PAID him the 20l. in part on the 28th of September, 1767.* — A Shuffle this, which, in a very emphatical manner, shews he can accomodate himself to say anything, that a pinch may require, — for hath he not, in order to make out something of a story pursuant to the Entry, said a few lines before, *that the 20l. was afterwards brought to the Account on the FINAL settlement of the Debt and Costs?* — So that take his stories any way that he puts them, and they are all palpable shuffle and falshood. — Let the Account speak for itself as to the Charge of Interest: it stands thus — *A year and quarters interest of thirty pounds - - - 1l. 17s 6d. — Received ALL but the Interest — Remains - - 1l. 17s. 6d.* — Instead therefore of the Interest being given up, because he was not intitled to it, the last word of the Account is a Continuance of the Claim; and the Account is plainly kept open because it was not paid; so that every conclusion, that properly arises from the Fact of the Charge, is warranted by all that is or can be evidence concerning it: The Account therefore, of it's own internal Proof, and by its circumstances which apply directly and unequivocally to the point, not only proves that 36l. 7s. 0d. was levied

of Richard Fowler, but excludes even the possibility of the *sol.* being applied to the Debt and Costs. AGAIN: *and then, if you can, blush, and cry guilty, Sparrow, you'll shew a little honesty.*—The before mentioned substituted story, in the Affidavit of the 15th. is “that the said “twenty pounds—in the Entry—was afterwards brought to the Account “Debt and Costs, Tongue and Marsh, on the final settling the said “Debt and Costs”—*which was in Trinity Vacation 1768,*—“and the Remainder of the Costs, in Brindley against Marsh, was carried to the “Account of Mr. Marsh, with whom Deponent *about that time* had “opened an Account.” — If Sparrow had not in this clause, which is before more fully cited, said that Mr. Marsh was *indebted to him* for the Costs in Brindley and Marsh, one might suppose he meant to distinguish his subsequent Account from these Costs and the Entry, as an account with Mr. Marsh; and then, what he says, *if true*, although it had rendered the whole a very awkward Transaction, and perplexed us a good deal to reconcile it with the settling the account, in Tongue's Business, yet would have been a Circumstance to throw confusion, and possibly doubt into the Case; but as he makes these Costs to be a debt due to himself from Mr. Marsh, the Entry relative to them, must necessarily be an account between them: of this however, as well as whether the settling Tongue's Account, and the introducing these Costs into his subsequent general account with Mr. Marsh, were cotemporary and correlative Transactions, we should have been best able to judge from the Account itself: but as he hath not thought fit to give it I shall do it for him.—So much of it as concerns this Matter was delivered in August 1774; and it begins and proceeds to the Article in question literally thus—

	£.	s.	d.
1768, May 28th, To Cash on Note	20	0	0
To Interest 28th August, 1774	6	5	0
1769, March 10th, To Cash on Note	11	0	0
To Interest to the 28th August, 1774	3	1	0
To Remainder of a Bill of Costs, Brindley and wife against Marsh	15	5	3

The Account then agrees with the Affidavit, and shews these Costs to be the *Remainder* of an old demand due to Sparrow himself from Mr. Marsh; and instead of their being brought to Mr. Marsh's subsequent general Account with Sparrow, on settling Tongue's Debt and Costs, in *Trinity Vacation*, 1768, in which respect alone it was material on the present question, it was not done till August 1774, the last Date in the Account, when it was made out and delivered, and in the ordinary course of things it became necessary to introduce it; but it is observable, that even then it was entered from the *Bill of Costs*, and the Article has no Analogy to the Entry.—This Story then, which was to conciliate the
false

false one of the 6th, likewise turns out to be an arrant Fiction in every part; and as it is the mere Coinage of his own brain, if Circumstance or Observation were necessary to confirm the Decisiveness, in this matter, of the Entry and Account, Sparrow's going these extraordinary lengths to invalidate them, gives that confirmation in a very particular manner; and shews his distress (after being obliged to produce them) in a very conspicuous point of view. Indeed he appears to have felt a little Compunction on this occasion, and therefore closes the sentence with these words, viz. "that he is as certain of the said several Facts and circumstances as he can possibly be of any Transactions, at so great a distance of Time."—A Salvo, I trow, excited by a Qualm, but delivered in Artifice:—Does it not betray a consciousness of his having stated the Accounts untruly, together with a Cunningness of Subterfuge, to excuse himself from having done it wilfully? But the cloven Foot *honest Friend*, is too palpable to pass unnoticed.—However, still I wish that he had finally rested upon it: the Cause would then have been decided on the real Evidence,—*the Accounts made at the Time of the Transactions*,—yet, strange as it may seem, it will presently be found that he would not, but, like the Dog to his Vomit, returned to his former Falsehoods; and having got the better of Qualms, appears determined to hazard every thing rather than fail.

IId. ASSIGNMENT:—on the Affidavit of 25th of May, 1782.

"That after the Death of Richard Fowler, the Deponent, John Sparrow, never intermeddled or interfered further in regard to the said Execution, (viz. the Execution against Richard Fowler) the Sale of his Goods, or in any Respect about the said Business."

EVIDENCE of the FALSHOOD.

This is false; Richard Fowler died the Instant the Execution was levied, and Sparrow's Actions under it afterwards were many.—The said Account made out by Sparrow on the final Result of the Proceedings, which took place in consequence of that Execution against the Sheriff for the Money levied, is not only a proof of his acting generally under it, but shews these particular acts, viz. *That he had Attendances under the Execution, for which he charges 6s. 8d.—That he received of the Appraiser under it 6l. 7d. 10d. part of the money levied.—That he brought an Action against the Sheriff for the Remainder, and received the same with Costs, on the close of those proceedings.*—These Actions are not equivocal or ambiguous, but speak precisely the conduct of an Attorney, in the ordinary discharge of his duty, in and through such a business, and *this*, his FOURTH Affidavit is mere matter of Tergiversation, new, and unthought of on his FIRST Affidavit; for there he expressly says that, "THIS DEPONENT not being able to obtain from the Sheriff the MONEY LEVIED of Richard Fowler,

...me SUCH AN ACCOUNT as would satisfy Mr. MARSH *what would REMAIN for him to pay*, he proceeded against the Sheriff, &c."— If then the said particulars in the Account wanted any explanation, or affirmation, as the actions of the Attorney under the Execution, that Affidavit has given it most satisfactorily, and proves Sparrow's DILLIGENCE under it, in every point, that his Duty as an Attorney required. The account likewise, in the article charging interest on THIRTY pounds, *under that Execution*, proves his acting under it in a very essential manner, and with whom. That the thirty pounds (besides 6l. 7s. 10d. by Sparrow received of Bloor the Appraiser) was levied under the Execution is proved by the first article of the Account, and Sparrow's Affidavit of the 15th where he says, the 6l. 7s. 10d. was deducted from the 36l. 13s. 8d. *to shew what remained due under it*; and that it was not only levied but withheld, till the account was settled, is proved by the Interest so charged upon it: apply then this Charge of Interest to the Affidavit of the 6th as stated a few lines above, and it is proved by a regular, simple, and most satisfactory series of Evidence, that it was the OFFICER the Interest was charged to, and the Account was settled with. — That Affidavit likewise shews that Mr. Marsh had nothing to do with the money levied; but it contains the ordinary state of applications of the Attorney to the officer for it, and to see whether any thing would remain to be paid by Mr. Marsh: unfortunately the officer is dead! but Mr. Marsh's Affidavit, *made before the said account appeared*—is circumstantial and full that he had nothing to do with the money levied.

Of the MATERIALITY and WILFULNESS of the 2d Falshood

All the evidence which shews this to be *false*, proves it also to be *material and wilful*. In a particular Manner it appears to be so, as it is the most eminent point of *new grounds*, raised on this Affidavit, for refusing the first falsehood on that of the sixth. On that Affidavit the only ground advanced to support the 20l. being paid on Account of the Debt and Costs was, that no more than 6l. 7s. 10d. (out of near 40l.) was levied on Rich. Fowler; but it now appearing, that the *WHOLE* was thereby levied, the Scheme of this Affidavit is to render that immaterial, *by throwing the whole Affair of that Execution upon Mr. Marsh*: For which purpose he now says, that he was prevailed upon by Mr. Marsh to levy the Execution; that he never afterwards interfered in the business of it; that Mr. Marsh insisted on the goods being sold; that it was at his request that he proceeded against the Sheriff, and the proceedings were dropped with his Approbation, he being the only person materially interested therein. — All which is to produce this happy conclusion, namely, that although, on the Plaintiff's Execution, the whole Debt and Costs

Costs were levied, yet it was not to satisfy the Plaintiff his debt and costs, but for the benefit of Mr. Marsh. What then becomes of his own account made out at the final Result of Fowler's Execution, which in every part is clearly an Account with the Sheriff or Officer? and no body else?——It is therefore needless to shew in how many respects it is absurd and against law, both as the Execution related to Mr. Tongue and Richard Fowler, and as it concerned his own Duty as the Plaintiff's Attorney; or that the grounds he offers, are in truth reconcileable to the ordinary course of such a Business: *In Fact* he did act under the Execution, even to a degree of diligence: what he hath sworn then is false; and these schemes are wilfulness indeed: although they are so formed as not bear the touch, yet still they are Schemes. If his head in this Instance has been deficient in Execution, it as well for the Cause of Truth, but no thanks are due to the Designs of his heart—there he certainly meant the *best he could* for the purpose: From the Affidavit of the 15th to the production of this he had ten days deliberation: It was a *REPLY* also which nothing but despair could have produced; for in *Fact* the Prothonotary, on the former Evidence, had signified an opinion not to allow him the 20l.

IIIId. ASSIGNMENT, on the same Affidavit of 25th May, 1782.

Viz.—“That the said John Marsh on the 28th September, 1767, paid or caused to be paid, to the deponent John Sparrow, (out of the said Sum of 100l.) the Sum of twenty pounds, on account of the said Debt and Costs, which the deponent, on the third day of October following, paid to his Client Edward Tongue, with 4s. more in full of his Debt.

The principal Fact in this Falshood, viz. *that the 20l. was PAID him on account of the Debt and Costs*, is a Resumption of the first Falshood, charged on the Affidavit of the 6th. It is therefore proved false by the same Evidence as that was, namely, by the *Receipt and Entry* of the same Day, by Mr. Marsh by the *Account*, by his having *retracted* it, and *substituted another Story* in its place in the Affidavit of the 15th.—than which we could not desire better Evidence. It's Falshood however is further proved by his receding from it in this very Affidavit, as in the next Assignment.—This principal Fact being false, that which he states as a consequence of it, namely, *the payment of the identical Sum to his Client*, must necessarily be false likewise. But although he swears here to the latter Fact pointedly and positively, yet afterwards he only rests it on Argument, from the circumstances he represents concerning Mr. Marsh; whence he conceives it improbable to have been otherwise.—In order to judge properly of the sufficiency of this argument

gument or probability, it will be necessary to refer to all the circumstances concerning Mr. Marsh, and the Opinions Sparrow held upon them on this Affidavit. — He says, to support the present point, “that he never was in any respect employed by the defendant Marsh, or had any concerns for him to the best of his knowledge and belief, before the time of his applying to him to borrow the said 100l. and which was done in consequence of the said Execution against him; and therefore this deponent conceives it improbable, that he should have paid the said Debt to the said Plaintiff Tongue, for the said Defendant Marsh, before he had received it.” — Low and discreditable as Mr. Marsh it thus represented to be, mind what Sparrow says of him, when he means to throw upon him the whole Affair of Richard Fowler’s Execution, it is, “*That he looked upon Mr. Marsh to be a person in good Circumstances, and he well knew that he was SECURE of the whole Debt and Costs from him.*” Now the affair of Fowler’s Execution, and payment of Tongue’s Debt, were of the same Date: The Debt and Costs were near forty pounds, and Tongue’s Debt twenty pounds four shillings. — So much then for this improbability. — But although prevarication like this, is a certain unerring proof and detection of a man’s dealing in falsehood, yet as it was a Fact, that on 3d of October following the Receipt of the 20l. he did pay his Client his Debt, and the Prothonotary paid particular attention to it, let us see how Sparrow in his former Affidavits treated that Fact, and what were the concurring Circumstances in Tongue’s affair, that should properly have effect in deciding, whether it was paid with the 20l. in question? — It is clear that Sparrow on his Affidavit of the 6th, had seen Mr. Tongue’s Receipt, yet it is equally clear, that it did not then appear to him capable of being made the present use of; all that he says of it there is, “*that he had long since paid his Client his Debt:*” as he now uses it therefore, is an after thought and Invention, to obtain by it something of a colour and circumstance to his resuming the first Falsehood, when every thing else had failed. It is however not only contradicted by, & incompatible with his former Affidavits, but every piece of written Evidence in the affair: The Receipt itself affords no such Idea, as that it was paid for Mr. Marsh: It was written by Sparrow himself, and is thus, — “Received 3d October, 1767, of John Sparrow twenty pounds 4s. for a Debt due from William Fowler.” — Neither on his subsequent Affidavit, of the 15th, was the present Scheme thought of, for there he says, “that the 20l. was brought to the account of the Debt and Costs on the FINAL settling them, and in another part of the same Affidavit it is, “that the 6l. 7s. 10d was, on making out the account under Fowler’s Execution, deducted from the 36l. 13s. 10d. to shew what remained due, under that Execution, after deducting the 6l. 7s. 10d. — The Entry of the 28th September, 1767, likewise proves that the 20l. was applied in discharge of demands due to himself; and the charge of Interest on thirty pounds, on making out

out the Account, and preserving the claim of it *after all the rest, was settled*, precludes even the possibility of the thing pretended. Is there then any probability in it? Nay is it not rank falsehood, after thought, and prevarication?—In Fact, at the Time he paid Mr. Tongue his debt, *the whole Debt and Costs had been actually levied TEN or ELEVEN Days under Sparrow's own eye*; and Mr. Tongue lives forty miles distance from Newcastle, where he comes twice a year among his customers, at Michaelmas and Lady Day: can there be any doubt then that he did it by anticipation? the Debt and Costs being at that time in the hands of the officer, and as secure as the law could make them? Every circumstance and fact in the case reconciles itself to it's being so, whilst the things advanced by Sparrow, are not only false, but throw all that is evidence, and must ever be regarded as evidence, into confusion. Again: Sparrow, by this payment, obtained a right to the whole Debt and Costs then in the officer's hands, who standing in contempt, and keeping him so long out of his money, furnish'd the pretext for charging Interest on the thirty pounds, which (after deducting what was received by Bloor) is the whole Money due under the Execution. In this way the charge of interest, though in itself not strictly regular and just, becomes reconciled to peculiar circumstances: and peculiar circumstances it must have been that induced it to be made on THIRTY pounds (made up of Debt and Costs) inasmuch as in the ordinary case, Mr. Tongue's debt alone of 20l. 4s. 0d. had it been on the best Security, could have founded it, but in truth it was only for goods sold.—The Sting, I grant, of the latter part of this charge, is nearly taken out, by his having finally rested the Fact on probability: but suppose it was the Case of a Fellow in a low station of life, who prevaricated, shuffled and cut, in this manner, in a Court of Justice; could we, even under all his disadvantages, possibly give credit to any thing he said? I apprehend not, but that we must say he was wilfully forswearing himself: what then must be our indignation towards this man—an *old practicing Attorney*,—who is found, at his Desk day after day, concerting plans to pervert real Evidence,—Evidence too consisting of his own vouchers and accounts? It is at least happy, for the sake of truth, that we can so clearly detect him.

MATERIALITY and WILFULNESS.—3d Falsehood.

It is in the same manner *material* and *wilful* as the first falsehood is shewn to be: with this, that the *Entry and Account* were then actually before him; for the latter part of this Affidavit, as in the next charge, is a kind of expostulation with them. It has this aggravation likewise, that this story is resumed on new false and artful grounds; than which surely there cannot be greater proof of wilfulness.

IVth ASSIGNMENT:—on the same Affidavit of 25th of May 1782.
*"That though the Entry in his Books is in Brindley and Marsh,
 as well as Tongue and Marsh, yet the twenty pounds was intended
 to be APPLIED, and was really APPLIED, in and upon Account of
 the latter, which Account was many years ago settled and closed."*

The FALSHOOD MATERIALITY and WILFULNESS of this Clause
 are so blended, that they will arise and appear upon a general con-
 sideration of the whole together.

Here Sparrow again takes up the Box, and makes another cast at the
 Cause: it is indeed his FOURTH to the ONE of Mr. Marsh's: But

"'Tis not the many Oaths that make the Truth."

And as the whole apparatus is of his own producing, let us see if he
 hath made his throw fair and above board, and there is no *cogging*.

This Clause shews him, in the most sensible manner, pinched and
 struggling with the Entry of 28th of September, 1767; and though he
 cannot but admit the truth and reality of it, yet *Intention*, without it's
 appearing when, by whom, or how signified, or whether signified at all,
 is to defeat it as Evidenced. I shall not deny him the merit of a certain
 sort of address in his attempt: but as it is the winding up of all his
 Stories, I beg leave to put this remark upon it, namely, *that it
 is his last SHIFT*: and, if it turns out to be false and fictitious, as it
 will be incumbent on me to prove, that it will not be too much to re-
 cord him here, as the first Master in the Art of Affidavit-making, that
 ever sculked about the Old-Bailey.

Let us then examine the effect of what he says, as matter of Evidence:
 To debate the inducement or intention alone, as thus darkly expressed,
 would be a mockery upon reason and proof: the substance of the whole
 therefore rests on the Assertion, that the 20l. was really applied as stated;
 but, as he, at the same Time, admits the Entry, they must be both taken
 together. The effect then, produced by the whole Clause, seems neces-
 sarily to be one of these, namely, that though the money was paid him
 upon the Accounts mentioned in the Entry, yet that it was subsequently
 applied to Tongue and Marsh's Account: or that it was *not PAID upon any
 Account*, but there was an *intention* upon the Subject between him and
 Mr. Marsh.—If the former was his meaning, then it confesses the 20l.
 was *not PAID him upon account of the Debt and Costs*, and therefore that
 story, and the supposed consequential payment of it to discharge
 Tongue's Debt, as part of it, vanish into air: if the latter, still, in like
 manner, the 20l. was not so paid, and the entry is an actual express ap-
 plication of the 20l. which if it doth not preclude intentions, is at least
 the fulfilling them, as it is a Fact and Transaction necessarily posterior
 to

to the payment of it. So that, take this Clause either way, his Affidavit is confessedly founded in Falshood; which, after so adroit a display of the Jugler's Art, will not, I think, be easily distinguished from wilful Perjury. In a dark story like this, composed of different matters, and on the whole dissatisfactory, it is a fair way, if not the only proper one, of rendering it intelligible, and ascertaining it's truth or falshood, to put all that he hath said into a kind of analytical Shape, so that, by the result corresponding or disagreeing with the design of the Story itself, we may safely pronounce it to be either true or scurrilous.

Thus detected in his Scheme, it seems difficult what Resource to put him upon, even for an argument; unless we place him in the *Dilemma* formerly taken by the Fool, namely that he did not THINK of what he was about, but would still insist upon the Fact. Let us see then once more, (although I presume sufficient hath been already proved to the same effect) whether it is not false and knowingly false, to say the 20l. was applied in and upon account of the Cause of Tongue and Marsh, as a mere matter of fact?—The ENTRY of 28th of September, 1767, is the first Charge or Account in that Cause, wherein Mr. Marsh is only debited with the Costs being about 2l. 16s. 6d. —The ACCOUNT which Sparrow in his Affidavit of the 15th, says is the Account that was settled, and that he hath no other Account or Entry in his Books relative to the said Debt and Costs—contains only these articles in Tongue and Marsh—*paid for Rule to return the fir-fa: 4s. 4d. —Copy and Service on the Under Sheriff 5s. 6d. —Term Fee and Letters 12s.* In all 11. 1s. 4d. —So that from the beginning to the End of Tongue's business, all the Charges Entries or Accounts (applicable or unapplicable to Mr. Marsh) put together, in the Cause Tongue and Marsh, make no greater a demand therein than 3l. 17s. 10d. and these consist of Costs only: is it not then most false to say the 20l. was applied in and upon account of that Cause? —The affair here is a mere matter of account, and all the accounts in it are plain and explicit: they are therefore decisive, not only against Sparrow, who alone made and kept them, as evidence how the accounts stood between him and Mr. Marsh; but as they are the Transactions themselves made at the time by himself, were before him at the time he swore, and are the best kind of Evidence which the law knows for establishment of Facts, it must be wilful Perjury to swear against them, without shewing plain and indisputable error therein: Then hath he done so? No: nor even a doubt in any one Instance: and although his Schemes have been many to pervert them, yet none of them will bear the touch, but they have, one and all, ended in direct falshood, or miserable artifice and subterfuge.

But as Mr. Marsh one of the Bail, was liable to pay Mr. Tongue's whole Debt and Costs (except the Costs against Richard Fowler the other Bail) at the Time the Executions issued against them, it is SUPPOSED that the 20l. might be applied to the Debt and Costs, without being expressly credited for

for in the Account : and notwithstanding what Sparrow hath sworn, it is insisted, that he ought not to be tied down to any particular Cause. This indeed should rather excite one's surprize than attention, in a matter of account; and the answer would be short and compleat, namely, that whatever the case was at that time, yet when Sparrow received the 20l. Mr. Marsh was not liable to any thing but his own Costs, by reason that on the Execution before levied upon Fowler, all the other Debt and Costs were actually raised; which is Proof why Sparrow then only charged him with the Costs, as in the Entry. — However let us give this Supposition some way, and see if there is the least ground of probability for it. — The only ground for any manner of application of the 20l. on this Affidavit, is the improbability as he says, of his having otherwise paid Mr. Tongue his Debt: but I trust it is not necessary to say another word in refutation of that. — The inquiry then will be, whether there *could* be any application of the 20l. otherwise than by the Entry of 28th September, 1767? For this purpose it would only be necessary to restate the Account, which contains *every thing* in the affair, but what was before charged in the Entry to Mr. Marsh: But as the circumstantial inducements to them may be satisfactory, I shall state in a few words, the transactions and progress of the Affair, as they appear in Evidence, from the levy of Richard Fowler's Execution (the first important transaction in this affair) to the final conclusion of it, under the proceedings against the Sheriff.

The Execution was levied on the day Richard Fowler died, being on the 23d, or 24th of September, 1767: It was levied under Sparrow's own eye, and there was taken under it sufficient to pay the whole Debt and Costs: on the 28th of September, 1767, there came into Sparrow's Hands twenty pounds belonging to Mr. Marsh, who then owed him 15l. 5s. 3d. on an old account: by the Entry of the same Day he credited Mr. Marsh for the 20l. on account of what was so due, and for the Costs of the said Action against him as Bail: On the 3d. of October Sparrow paid his Client his Debt: The Officer did not pay the money he had levied of Fowler, but gave Sparrow so much trouble about it, that he swears he was not able to obtain it, without proceeding against the Sheriff: these proceedings, after a length of time, were stayed, and there upon the account produced was made out and settled by Sparrow. — This Account commences with Fowler's Execution, charging thereon as much money as the whole Debt and Costs amounted to: it deducts from that charge a small sum received by the Appraiser under the Execution; and the remainder, together with the Costs of the Proceedings, are, at the foot of the Account, acknowledged by Sparrow to be received in one gross sum: *It is silent as to the Debt paid Mr. Tongue of twenty pounds, 4s. of which twenty pounds is said to be the 20l. belonging to Mr. Marsh, and the four shillings Sparrow's own Money: It is silent as to Mr. Marsh's twenty pounds; and it is also silent as to the Costs of the Action against Mr. Marsh: — Which silence, of itself, seems fully to decide that it could not be an account*

count with Mr. Marsh; for, Sparrow having added four shillings of his own proper money to the 20l. of Mr. Marsh, (supposed to be paid to Mr. Tongue) and that 20l. being taken from the Entry, where it was applied in account between them two only, would particularly make them *parties to the Business and Account*: and yet the Entry stands exactly as it was first made, and the Account is wholly incompatible with an Account with Mr. Marsh in the Business, as it related to him in the ordinary Case of Bail, and the more so, as it would have done if the payment of Tongue's Debt had concerned him. But the supposition, either that Mr. Marsh's twenty pounds, or the payment of Tongue's Debt related to the Business, otherwise than as Sparrow paid it on Account of what he should receive under the Execution, throws every thing into puzzle, confusion, and nonsense, upon the Account, which was the only one that was ever settled: whereas the Account itself is regular, clear, simple, and compleat; and no argument or ingenuity can mend (or indeed abate) it's own internal Proof, that it was an account against the officer for the money levied, following as correctly and naturally from what Sparrow had before stated, of not being able to get the money from him, as it is possible to state one thing to follow another: and the whole is closed as such, by the charge of Interest on THIRTY pounds under Fowler's Execution, and his saying that it REMAINS, than which, nothing could more effectually exclude the 20l. from the account.

The transactions and accounts then are in a regular series, and distinctly kept, as the events pointed out: The ENTRY as an Account, between Sparrow and Mr. Marsh, for the Costs of Mr. Marsh's Action, and other demands of Sparrow: and the ACCOUNT under the Cause of Tongue and Fowler, as it related to the Sheriff. And this distinction was regarded and adhered to in the Account itself; where, although the Cause of Tongue and Marsh is introduced, yet it is only to charge the Sheriff with the said three Articles concerning the Rule against him in that Cause. To suppose after all this (which indeed hath had more words spent upon it than the plainness of thing deserves) that the 20l. was taken from the Entry, *these Costs*—against Mr. Marsh—*have never been paid!* and not only so, but it produces this further absurdity, namely, that Mr. Marsh's twenty pounds was applied in the discharge of Richard Fowler's Costs! Nay that all this was done by Sparrow himself, to whom the money was due, that the 20l. was first applied to! The supposition then (which hath no fact to support it) is to be maintained if at all, against all Evidence, the Justice of the Case, Sparrow's own interest, and common sense.—It is, in truth, an instance to prove the danger of speculating against the real Evidence of FACTS: and although the lenient Spirit and Inclination of the Judges is such, as to admit of, and to advance, suppositions (arising out of mere possibility) in favour of a man so charged, yet if, on comparing them with such incontrovertible Evidence, they appear to be absurd or impossible, they are ever I think

(as

as they ought) as readily abandoned—for common Security requires us to know, that there are wicked as well as weak men.

Vth ASSIGNMENT: on the same Affidavit of the 25th of May, 1782.

“That the foregoing Affirmation, “that John Marsh, on the 28th September, 1767, PAID or caused to be PAID, to the Deponent John Sparrow, out of the said sum of 100l. the sum of 20l. on Account of the said Debt and Costs (meaning the Debt and Costs in the said Cause of Edward Tongue against William Fowler)” and the said other Affirmation, “that the said twenty pounds was INTENDED to be APPLIED and was really APPLIED, in and upon the Account of Tongue against Marsh,” disagree & are inconsistent with each other, and contain different and contradictory relations and assertions, of and concerning one and the same matter of Fact.

The two Stories contained in this Charge, being advanced in equally positive terms, without any extenuation of either, will admit of no discrimination; and, being direct contradictions of each other, they together contain certain falshood, and include all that is essential to Perjury, without further Proof; For as a thing of an entire colour, cannot be at the same time both *black* and *white*, so one of these Stories must necessarily be false: and it must necessarily be wilful likewise, as every Change of Story must.

However from the legal connection of these Causes, TONGUE against FOWLER, and TONGUE against MARSH, it is objected to this Charge, that although he hath first said, that the 20l. was PAID to him on Account of the Debt and Costs generally, and afterwards that it was applied in and upon Account of the Cause of Tongue against Marsh particularly, yet as the latter Cause was dependant on the former, they together made but one affair, and then that the payment to him, and application by him, of the 20l. upon that one affair, are consistent, and relate to each other as one transaction: ERGO, the contradictions are not material.——The Credit of Ingenuity seems due to the objection; but that alone will not make it substantial: and I must confess that the making of it gives me some pain, as it looks like the suggestion of legal subtlety, rather than the result of attention to facts.

The objection admits that the two assertions, here complained of, are contradictory, (and it was impossible to do otherwise) but insists they are immaterial, and that Immateriality is rested upon some Notions of LAW respecting the general consequences of Actions against Persons as Bail. I shall not minutely examine these notions; but only observe that in regard to the facts and circumstances

circumstances of this Case they do not apply. In Law, Practice, and common Speech, the Debt and Costs in such cases have relation to the original Action against the Principal; and if the whole affair, as well concerning him as his Bail, is made out into one general Account, against him, then, and then only I apprehend, it can properly be said to make but ONE AFFAIR, or rather one DEMAND, which will be more exact, as in Justice he ought to pay the whole; But if the Law is suffered to go on, in it's own direct course, against the two Bail, as in this Case, it not only may, but it certainly will, produce different consequences, demands, and accounts, in each Cause; because each of the Bail is liable for his own distinct and separate Costs, which form a separate Demand between the Plaintiff and particular Defendant only, and do not nor can relate to the other Bail. Likewise either of the Bail is liable to the whole Debt in question, together with such Costs as have been incurred by proceeding against the principal; and it is in the option of the Plaintiff against which he will take it. It often happens that it is divided or proportioned between the Bail: It often happens likewise that it is wholly taken of one; and then the other hath nothing to pay in the affair, but the individual Costs of proceeding against him: So that the Inclination of the Plaintiff makes the demand against each Bail to be more or less. —It will then only remain to be seen in this case, when the appropriation of the Debt and Costs, or distinction therein, actually took place. —On the 23d or 24th of September, 1767, the whole Debt and Costs were levied of Richard Fowler, except Mr. Marsh's own Costs: on the 28th Sparrow debited the Account of Mr. Marsh with him, with the Costs so belonging to him. —The Levy then became, and has ever since formed, one separate Account with the Officer for the money raised thereon: and Mr. Marsh's Costs became and have ever since been a separate Account with Sparrow — So that before and on the 28th September, 1767, the Account of the DEBT and COSTS, and the account in TONGUE and MARSH, were as separate and distinct Accounts and demands, relative to different persons, as if they never had any affinity with each other: To impute therefore the 20l. received by Sparrow, after the said Levy, to both the said Accounts, was imputing that Sum to different Accounts, and of course contradictory: and contradictory too for the material purpose of confusing the Accounts, which of themselves are so plainly distinct THAT HE WHO RUNS MAY READ.

Having established this as I apprehend beyond a doubt, the latter part of the objection will not be very material: yet a word or two upon it. It will not be said, I presume, that the Receipt of money, and the Application of it, always relate to the same account: The Application may relate to the Receipt, if there is no inducement to the contrary; but if there is, it will vary accordingly: or, which seems more directly to the point in this Case, a man's STORY of the Account, upon which he received a Sum of money, and that of the Account to which he applied it, will relate to each other, or become contradictory, according

ding to the Facts or Inducements under which he states the application to have taken place. — In this Case Sparrow plainly asserts that he received the twenty pounds on Account of the Debt and Costs: but when he comes to the Entry of the Transaction, WHICH CONTRADICTS THE ASSERTION, his Story of the application has no relation to the preceding one of the Receipt, but is induced by that Entry, as a kind of compromise with it, through the medium of intention: In truth then, the latter Story of the application, being induced by a fact that renders the former assertion untrue, there could be no relation between them: and, vice versa, if his first assertion, concerning the Account upon which it was received, had been true, then the subsequent pretended application could not have been induced as he hath represented it, — ERGO, the two Stories are mutually and substantially contradictory.

And yet the observation is that it is impossible to believe Sparrow INTENDED to perjure himself for so small a Sum as twenty pounds. — With respect to the matter of value, IN THIS CASE, it will not be considered as of much weight, were it expressly as stated, if it ought in any. And as to his INTENTIONS, although I cannot help feeling a little surprize at the observation, yet the quarter from whence it came, throws at a great distance indeed any Idea of it's proceeding from a desire to force this man, and far, very far, am I from entertaining it: yet for me to say, that I believe he INTENDED TO COMMIT PERJURY, must appear like a puerility: but saying that I believe, and have not, nor ever had, a Doubt, THAT HE HAS REALLY COMMITTED THE CRIME OF PERJURY IN THIS CASE, seems something to the point, although it hath been unjustly insinuated, and that very untimely in my mind, that there was reason to believe even I did not think he was guilty. — In any of the Crimes of which deliberation makes a part, it is not, I believe, necessary to prove it by express words or declarations of the Culprit; but that the mental Guilt, or Intention, is and ever must, from the nature and necessity of the thing, be sufficiently shewn by Facts and Circumstances, which naturally or rationally evince a deliberation in the Act. That his several Stories here charged against him are false, I presume to say, there can be no doubt, nor of the Willfulness either; if concealing the evidence which would have proved the Falshood; if the transactions, and written evidence of those transactions, against which he hath sworn, being his own acts, and before his eyes at the time he did swear, and his inventing Story after Story, to confute and overturn them, are any proofs of knowledge or mental coincidence in the fabrication of them. Therefore bootless will it be to say, that it would be hard to convict him of Perjury, in swearing to a transaction of 15 years standing. The Law says, that if a man dares to swear positively to a matter, OF WHICH HE WAS IGNORANT AT THE TIME, although it should turn out to have been true, he shall be guilty of Perjury, and punished for his hardness and presumption, when he ought to have been delicate and reserved: Then how odious is this man's conduct? To
excuse

excuse him must put it into his mouth to say to the world;—"It is true that such were the transactions, and they were mine, and they were before my eyes at the time I swore; but I then thought fit not to know anything about them; I laid my understanding by upon the shelf, and swore CONTRARY TO THEM ALL, in the manner I have done, AND GOT MY ENDS BY IT!

It will not be doing Justice to this Case, or to this man's TRUE character, to forbear a short recital of the question, relative to the fifteen pounds, which he pretended to have lent Mr. Marsh.——In his accounts delivered he charged Mr. Marsh with fifteen GUINEAS on the TWENTIETH, and fifteen POUNDS on the twenty SECOND of April, 1778: Mr. Marsh said he had always given Vouchers, and did not remember receiving two Sums so near each other: Sparrow said he had a Voucher for the fifteen GUINEAS, and so it passed before the Prothonotary; but not having any for the fifteen POUNDS, he was to make it out by Evidence; and for that purpose he and his Brother made Affidavits, putting their best leg foremost; but these not being sufficient, he then strained out another affidavit, coming pretty near, though shy of, the fact, and produced an Entry from his Cash-Book, OF HIS OWN HAND WRITING, of the 15*l.* being advanced on the twenty SECOND of April; but, without swearing himself to the TIME of it's being made, although it was only material in that respect, he set up a young writing Clerk, who knew nothing of the Fact, TO PROVE THAT IT WAS DONE AT THE TIME IT BEARS DATE!

Sparrow being obliged to deliver up the Vouchers, on payment of the money allowed by the Prothonotary, the Case, relative to the two Sums of fifteen Guineas and fifteen pounds, turns out really to be, that there was no Sum of fifteen GUINEAS lent at all.—The only Voucher is for fifteen POUNDS lent on the TWENTIETH of April, on which Day the fifteen GUINEAS was pretended to be lent, and there is none for any Sum lent on the twenty second: And yet Sparrow obtained the fifteen Guineas, pretended to be lent on the twentieth, together with Interest, on a representation to the Prothonotary that he had a Voucher for it.—An imposition like this, so complicated, dirty, and fraudulent, I presume is not easy to be paralled: it shews the great reliance that is to be paid to his Books, and to what he says or swears; for though, of itself it doth not directly prove, that the fifteen pounds, pretended to be lent on the twenty SECOND, was not lent, yet, under all the circumstances of the evidence, and it's being a Fact, that he would not let his Books be inspected, though recommended by the Prothonotary, it is almost demonstration itself that that Sum was not lent, and that the pretended Entry in the Cash-Book, was merely a manufacture for the purpose.—And yet this man impudently demanded, and without remorse keeps, both the Sums, Interest and all!

The

THE CASE then did not consist of Perjury alone, but all those vile tricks which wretched Understrappers practice, to mislead and baffle Justice: and yet the Attempts, to bring him to answer, are branded with Rancour and Malice! and the present appearance of things is like a confederacy against Conviction! — But wherefore is all this? Surely it cannot be thought, even by the blindest prejudice, that the Occasion justifies it! and yet I think I may say that, otherwise, it is absolutely unprovoked. — Indeed, I trust and hope, that it is not really so general as it appears: and that the Imputation of Malice, though a great Gun truly, in the hands of such an enemy, in such a contest, and the explosion has been great and the shock considerable, has still been only powder and smoke that will soon evaporate: However, this I know, that malice or persecution of any sort, or towards any man, is most heartily abhorred by one person at least: But is Tameness, therefore, necessary to this VARLET? — One, who dares not be open in any thing, but deals in cunning, and, by indulging himself in all the underhand Schemes of malice, has rendered “respective Lenity” contemptible? — I think it wo’ not be. — And yet I have not urged, Mr. Marsh: He intitled himself to my opinion and hath had it; in consequence of which this Indictment was his own prosecution merely. As to the former, I shall not appologize, but only observe, that it’s being presented as it was proceeded entirely from occurrences AT THE ASSIZES, by which Mr. Marsh was intimidated from GOING TO THE END; and the Case was then so represented and treated, that to have receded, under the circumstances, must have produced worse consequences, and constructions, than any Issue of it could possibly do.

— If these charges and proceedings had been instigated by malice or any thing but their being TRUE, and the intrinsic merits of the Case, events have been most favourable to him: and the choice of subject for shewing such malice, must have been WISELY made indeed, since nothing could more effectually put that Vengeance into his power, which he so much thirsts after, than it’s failure: But the truth is, that this Prosecution was the only means left to Mr Marsh, after every other fair and proper means had been tried in vain, to obtain Justice, instead of which, or ever attempting to justify himself, Sparrow has triumphed and persecuted. Is such a man then to be sanctioned? And is general unprovoked oppression to be added to his particular Baseness & Injustice? I trust it will not

* Among other instances of this *upright* and *honourable* conduct, will not be forgotten what passed, relative to the Disturbances last spring, at Etruria: — After a hand-bill, proceeding from the people’s being brought to temper, and separating, on their first meeting, went to the press, his Brother made an alteration in it, tending to re-animate them: he dispersed it in that state; and afterwards at a Meeting of the Gentlemen, where he assisted, it was fathered upon me, in my absence. Nor will it be forgotten what other wicked representations followed that infamous act, in those affairs.

not; and that we are not in such disgraceful times as make it dangerous, for poor fellows, to assert the Laws, or exact Rights against a man, who is criminal, because he hath some how gained connection.---This is an affair in Law: Sparrow is under no Disadvantages; indeed they are all on the other side. No one can or ought to be interested in it, but the parties; and justice, as well as good nature, seems to point out, that they should be left to fight it out themselves: Whereas confederacy may not only prejudice a fair Trial, if Sparrow chuses to take up this Publication as a Libel, which it certainly is (IF NOT TRUE) and a very extraordinary one too, both in it's nature and tendency: but it must look like the old story, "that an english Mastiff bit a fellow by the heel, who had kicked him without provocation; and the Scoundrel in reply, called out "mad Dog," raised a mob, and had the poor animal stoned to death for his just resentment!"---But Truth should ever inspire Hope and Confidence; and Shakespeare says,

*All's well that ends well yet,
Tho' time seem so adverse, and means unfit:—*

J. Bromley.

Newcastle Staffordshire, November 20th 1783.

The

The ACCOUNT within referred to.

Tongue against FOWLER.

767. EXECUTION for - - - - - 36 7 0
ATTENDING - - - - - 0 6 8

Recd. by Bloor, - - - - - 36 13 8
6 7 10

30 6 10

Tongue Assignee against Marsh.

768. Paid for Rule to return the Writ of fi. fa. - 0 4 4
Copy and Service, - - - - - 0 5 0
Term fee, and Letters, - - - - - 0 12 0

Ditto, Assignee against FOWLER.

Hilary, 1768.
Paid for Rule, - - - - - 0 4 4
Copy and Service on the Under-Sheriff, - 0 5 0
Term Fee, and Letters, - - - - - 0 12 0
Affidavit of Service, Duty, and Oath, - 0 5 0
Paid for the Return, - - - - - 0 2 0
Attending. - - - - - 0 3 4

Tongue against Mainwaring, Esq; [the Sheriff.]

After Vac.
Quos. and Letters, - - - - - 0 13 10

Trin, Vac.
Alias Quos. - - - - - 0 12 10
Copy and Service, - - - - - 0 5 0
Letters, - - - - - 0 1 4
Accommodation Fee, - - - - - 0 6 8

A Year and quarter's Interest of 30l. 34 19 6
1 17 6

Bill of Costs. - - - - - 36 17 0
0 2 6

Recd. ALL but the Interest.

36 19 6

36 19 6
D. 85 2 0

Rems. 1 17 6

F I N I S.

Ex. G. M. B.

The Account within related to

£ 7 0
£ 8 8

£ 18 8
£ 7 10

£ 6 10

£ 4 4
£ 5 0
£ 13 0
£ 5 0
£ 2 0
£ 8 4

£ 4 4
£ 5 0
£ 13 0
£ 5 0
£ 2 0
£ 8 4

£ 18 10
£ 12 10
£ 5 0
£ 1 4
£ 6 8

£ 10 6
£ 17 6

£ 17 0
£ 2 6

£ 19 6

£ 10 6
£ 8 0
D. 22 0

Remains £ 19 6

£ 19 6

Recd. from the late

Bill of Costs

A Year and quarters interest of 901

Accommodation fee

Copy and postage

After Vac.

Guest and late

Tongue against Main

Attendance

Paid for the Room

Attending of Service, Day, and Night

Travel, and late

Copy and postage for Index-Book

Paid for Rate

Longe against Main

Attendance

Copy and postage

Paid for the Room

Attendance

Copy and postage

Paid for Rate

Longe against Main

Attendance

Copy and postage

Paid for Rate